

September 23, 2014

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BY ELECTRONIC DELIVERY AND FEDERAL EXPRESS

Sebastian Gomez Abero, Esq.
Chief, Office of Small Business Policy
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: *In the Matter of Barclays Capital Inc.*; File No. 3-16154

Dear Mr. Gomez Abero:

This letter is submitted on behalf our client, Barclays Capital Inc. (“BCI”), the settling respondent in the above-captioned administrative proceeding brought by the Securities and Exchange Commission (the “Commission”). BCI hereby requests, pursuant to Rule 506(d)(2)(ii) of Regulation D promulgated under the Securities Act of 1933 (the “Securities Act”), a waiver of any disqualification from relying on the exemption under Rule 506 of Regulation D that may be applicable as a result of the entry of an order against BCI (the “Order”) on September 23, 2014, which is described below.

BACKGROUND

On September 23, 2014, BCI entered into a settlement with the Commission resulting in the Commission issuing the Order. BCI consented to the entry of the Order that found that BCI willfully violated the Advisers Act Sections 204(a), 206(2), 206(3), 206(4), and 207 and Rules 204-2, 206(4)-2, and 206(4)-7 thereunder arising as a result of BCI’s systemic failures after it acquired Lehman Brothers Inc.’s (“Lehman”) advisory business in September 2008. The Order found that when BCI integrated this advisory business into its existing business, it did not enhance its infrastructure to support the new business, did not adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act, and did not make and keep certain books and records.

The Order also found these deficiencies contributed to other violations – specifically, that BCI:

- executed more than 1,500 principal transactions with its advisory client accounts without required written disclosures or client consent;
- charged commissions and fees, and earned revenues, that were inconsistent with its disclosures to 2,785 advisory client account;
- violated custody provisions of the Advisers Act; and

- underreported its assets under management in its March 31, 2011 amendment to its Form ADV by \$754 million.

Solely for the purpose of settling these proceedings, BCI consented to the Order without admitting or denying the matters in it (except the Commission's jurisdiction). The Order requires BCI to cease and desist from committing or causing any violations and any future violations of Advisers Act Sections 204(a), 206(2), 206(3), 206(4), and 207 and Rules 204-2, 206(4)-2 and 206(4)-7; censures BCI; and requires BCI to pay a civil monetary penalty of \$15,000,000. BCI must also comply with certain undertakings, including retaining an independent compliance consultant ("IC") within 270 days of the date of this Order, notify existing and prospective clients of the order, and keep records of BCI's compliance with the undertakings.

DISCUSSION

BCI understands that the entry of the Order will disqualify it, affiliated entities, and other issuers from relying on the exemption under Rule 506 of Regulation D promulgated under the Securities Act. BCI is concerned that, should it or any of its affiliated entities be deemed to be an issuer, predecessor of the issuer, affiliated issuer, general partner or managing member of an issuer, promoter, or underwriter of securities, or acting in any other capacity described in Securities Act Rule 506 for the purposes of Securities Act Rule 506(d)(1)(iv), BCI, its affiliated issuers, and other issuers with which BCI or an affiliate of BCI is associated in one of the above-listed capacities and which rely upon or may rely upon this offering exemption when issuing securities would be prohibited from doing so. The Commission has the authority to waive the Rule 506 under Regulation D exemption disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances. *See* 17 C.F.R. § 230.506(d)(2)(ii).

BCI requests that the Commission waive any disqualifying effects that the Order may have under Rule 506 of Regulation D on the following grounds:

1. BCI's alleged conduct in the Order applied in part to securities offerings as a result of the execution of certain principal transactions in advisory client accounts. BCI's alleged violations occurred over approximately three years in the context of a period of rapid and complex integration by BCI of multiple business lines acquired from Lehman. This integration included Lehman's former investment advisory business, which was part of a new wealth management offering for BCI in the U.S. As discussed below, BCI has taken steps to address the conduct alleged in the Order.

2. BCI has taken steps to ensure that the conduct alleged in the Order does not recur. Prior to the SEC Office of Compliance Inspections and Examinations' issuance of a deficiency letter in connection with this matter in January 2012, and for over a year thereafter, BCI retained and used outside specialists to develop and implement an action plan aimed at enhancing its compliance program. In addition, BCI has reimbursed or credited its affected clients

approximately \$3.8 million, including interest. Moreover, the Order requires BCI to comply with certain undertakings, including to:

- (a) retain an IC to conduct a review to assess the adequacy of BCI's policies, procedures, controls, recordkeeping, and systems, in particular those relating to (1) BCI's wealth management division's ("BWIM's") trading and investment parameters, billing, reporting, and the related processing of new clients; (2) BCI principal trading for or with BWIM advisory clients; (3) the disclosures to BWIM advisory clients regarding the fees BCI earns, or pays solicitors, in connection with client accounts; (4) the identification of advisory accounts for annual surprise examination and Form ADV filing purposes; (5) the distribution of annual audited financial statements of entities for which BCI is authorized to withdraw client funds maintained with a custodian upon its instruction to the custodian; and (6) the receipt of written internal control reports for related persons that maintain custody of assets of BWIM advisory clients;
- (b) require the IC to submit a written and detailed report of its findings to BCI and to the Commission staff, which shall include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, and the IC's recommendations for changes or improvements (the "Recommendations");
- (c) adopt all of the IC's Recommendations or, in the event BCI considers any Recommendations to be unduly burdensome, impractical, or inappropriate, all of the IC's final determinations regarding the Recommendations;
- (d) cooperate fully with the IC and provide the IC with access to such files, books, records and personnel as are reasonably requested by the IC for review;
- (e) certify, in writing, implementation of the IC's Recommendations or final determinations;
- (f) preserve a record of BCI's compliance with the undertakings; and
- (g) provide notice to advisory clients of the Order.

Also, BCI took the following steps to identify and address various deficiencies, and to address compliance and structural issues at various times prior to the entry of the Order:

- (a) BCI terminated the conduct addressed in the Order.
- (b) BCI has reimbursed or credited its affected clients approximately \$3.8 million, including interest.
- (c) BCI created a steering committee to direct various changes, including:

- (i) Enhancements to the overall control structure;
 - (ii) Increased staffing levels;
 - (iii) Expansion of BWIM General Counsel's responsibilities to include risk and compliance functions;
 - (iv) Formation of a dedicated compliance team for its advisory activities; and
 - (v) Enhanced staffing, training, and evaluation practices and procedures regarding portfolio management, trading, trade allocation, and supervisory controls.
- (d) With respect to marketing, BCI created new procedures for the review, approval and retention of marketing materials and other communications with clients and prospective clients.
- (e) With respect to regulatory reporting, BCI implemented procedures to address the accuracy of regulatory filings and improved processes for identifying, aggregating, calculating, and storing data needed for the Form ADV.
- (f) With respect to principal trades and conflicts of interests, BCI implemented procedures for a more thorough review of potential conflicts and acting on conflicts identified.
- (g) With respect to referral arrangements, BCI established controls associated with cash payments to solicitors pursuant to which BCI must (i) execute a written solicitation agreement with each solicitor that meets all the requirements of Rule 206(4)-3 under the Advisers Act, (ii) require solicitors to provide written disclosure statement to each actual or prospective client that fully describes the referral arrangement, (iii) require the solicitor to obtain from each actual or prospective client a signed and dated copy of the disclosure statement and deliver the executed disclosure statements to BCI for its records, and (iv) obtain an acknowledgement from each referred advisory client that the client has received the relevant investment adviser's Form ADV Part 2A or brochure.

3. BCI uses (or participates in transactions using) the exemption in Rule 506 of Regulation D, including with third-parties such as certain investment funds and corporate issuers. The ability of BCI to use (or participate in transactions using) such exemptions is an integral part of its business strategy. In the last three years, BCI has participated in at least 1,700 offerings under Rule 506 of Regulation D, raising at least \$30 billion (treating each subscription period of a fund that offers its interests on a continuous basis as a separate offering). Currently, BCI is acting as placement agent for 59 private funds making offerings under Rule 506 of Regulation D, 25 of which are offshore funds being offered under Rule 506 of Regulation D in the United States and under Regulation S outside the United States. In addition, BCI is currently acting as

placement agent in three transactions that rely on Rule 506 of Regulation D for corporate issuers raising approximately \$650 million in capital. A disqualification of BCI and any of its affiliates from using (or participating in transactions using) the exemption under Rule 506 of Regulation D would, we believe, have an adverse impact on the third parties that have retained, or may retain in the future, BCI and other entities with which BCI is associated in one of those listed capacities in connection with transactions that rely on this exemption.

4. For a period of five years from the date of the Order, BCI will furnish (or cause to be furnished) to each purchaser in a Rule 506 offering that would otherwise be subject to disqualification under Rule 506(d)(1) as a result of the Order, a description in writing of the Order a reasonable time prior to sale.

In light of the grounds for relief discussed above, we believe that disqualification is not necessary under the circumstances and that BCI has shown good cause that relief should be granted. Accordingly, we respectfully urge the Commission, pursuant to Rule 506(d)(2)(ii) of Regulation D, to waive the disqualification provision in Rule 506 of Regulation D to the extent they may be applicable as a result of the entry of the Order as to BCI.¹

Please do not hesitate to call me at the number listed above if you have any questions.

Sincerely,



Jonathan S. Pressman

¹ We note in support of this request that the Commission has granted relief under Rule 506 of Regulation D for similar reasons or in similar circumstances. *See, e.g.*, Jefferies LLC, S.E.C. No-Action Letter (pub. avail. March 12, 2014); Credit Suisse Group AG, S.E.C. No-Action Letter (pub. avail. Feb. 21, 2014); and Instinet, LLC, S.E.C. No-Action Letter (pub. avail. Dec. 2, 2013). BCI is not requesting waivers of the disqualifications from relying on Regulation A and Rule 505 of Regulation D at this time because it does not now use or participate in transactions under such offering exemptions. BCI understands that it may request such waivers in a separate request if circumstances change.